BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD FLORES, JR.	)	
Claimant	)	
VS.	)	
	)	Docket No. 214,600
GREENWAY ELECTRIC, INC.	)	
Respondent	)	
AND	)	
	)	
GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA	)	
Insurance Carrier	)	

ORDER

Claimant appealed the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated October 2, 1996.

ISSUES

Claimant raised the single issue of whether claimant suffered a personal injury by accident that arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issue raised by the claimant is a jurisdictional issue contained in K.S.A. 44-534a, as amended.

Claimant alleged he injured his neck on May 28, 1996, when he took his hardhat from the trunk of his car, placed it on his head with both hands, pushed the hardhat down, and immediately felt like his neck had "collapsed." Claimant was employed at the time by the respondent as an apprentice electrician. Respondent was an electric subcontractor to an equipment manufacturer who was installing new equipment in a flour mill owned by Cereal Food Processors. Claimant's accidental injury occurred in the parking lot owned and controlled

by Cereal Food Processors. Claimant was on his way to work and had not yet assumed his duties of employment with respondent. Therefore, if claimant's injury arose out of and in the course of his employment, it had to occur on the premises of the employer or on the only available route to or from work which involved a special risk or hazard. *See* K.S.A. 44-508(f).

The Administrative Law Judge denied claimant's request for compensation benefits finding claimant was on his way to assume the duties of his employment and the accident did not occur on the premises of the employer. The Appeals Board agrees with the Administrative Law Judge's analysis of the evidence. At the time claimant alleged he injured his neck, he had not started performing his job duties for the respondent. Accordingly, in order for the neck injury to have arose out of and in the course of claimant's employment, the accident would have to have occurred on the premises of the employer. The record established the accident happened in a parking lot owned and controlled by Cereal Food Processors and not the respondent. The premises exception to the "going and coming" rule in Kansas is narrowly construed to be a place controlled by the employer or a place where an employee may reasonably be during the time he is doing what a person so employed may reasonably do while the employment is in process. Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 39, 883 P.2d 768 (1994). In the instant case, the Appeals Board finds the claimant was on his way to work and the place the injury occurred was not owned or otherwise controlled by the respondent. Furthermore, the parking lot was not a place the claimant would reasonably be in the performance of his duties for the respondent. The place claimant's job duties were to be performed was located in A Mill building owned by the Cereal Food Processors and not the parking lot.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated October 2, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
D. Steven Marsh, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director